



# HOUSE BILL 1069: Unemployment Insurance Law Changes

2013-2014 General Assembly

---

<b>Committee:</b>	Rules, Calendar, and Operations of the House	<b>Date:</b>	September 9, 2014
<b>Introduced by:</b>	Reps. Howard, Warren, Arp	<b>Prepared by:</b>	UI Team
<b>Analysis of:</b>	Ratified		

---

**SUMMARY:** *House Bill 1069<sup>1</sup> would make the following changes to the unemployment insurance (UI) laws as recommended by the Joint Legislative Oversight Committee on Unemployment Insurance. The Governor vetoed the bill on June 24, 2014.*

- *Clarify that UI claim information is confidential unless the disclosure is permitted by federal regulation, and would exempt UI information from the public records disclosure requirements of Chapter 132 of the General Statutes. This Part of the bill was enacted as S.L. 2013-117 (Senate Bill 42).*
- *Authorize the Division of Motor Vehicles (DMV) to disclose social security numbers to Division of Employment Security (DES) for the purpose of verifying employer and claimant identity; require UI claimants to contact 5 potential employers per week; eliminate the procedure to request reconsideration of DES decisions; and make other technical changes to modernize language and fix statutory references to DES.*
- *Clarify DES authority to garnish and attach the credit card receipts of delinquent taxpayers.*
- *Eliminate the variable range for UI duration and base the duration of UI benefits only on the unemployment rate. Under the proposal, all UI claimants would receive the maximum number of weeks of UI benefits currently allowed.*
- *Require photo identification to receive UI benefits.*
- *Validate higher-level appeal decisions made since November 1, 2011; create staggered terms for the Board of Review members; and clarify the confirmation process for members of the Board of Review.*

## **PART I: CONFIDENTIALITY OF UI INFORMATION**

This Part of the bill was enacted as S.L. 2013-117, Senate Bill 42.

## **PART II: AUTHORIZING DMV TO DISCLOSE SOCIAL SECURITY NUMBERS; REQUIRING UI CLAIMANTS TO CONTACT 5 POTENTIAL EMPLOYERS PER WEEK; AND ELIMINATING THE PROCEDURE TO REQUEST RECONSIDERATION OF DECISIONS.**

---

<sup>1</sup> As introduced, this bill was identical to S759, as introduced by Sens. Rucho, Clark, which is currently in Senate Finance.



# House Bill 1069

Page 2

**CURRENT LAW:** G.S. 20-7(b2) authorizes DMV to disclose social security numbers to a list of State entities subject to federal limitations. DMV obtained the social security numbers when a person applied for an identification card, learners permit, or driver's license.

G.S. 96-14.9(e) requires UI claimants to actively search for work while receiving UI benefits. The claimant must make 2 job contacts with potential employers on 2 different days during a week. G.S. 96-15(h) provides a procedure for parties to any decision of DES to request reconsideration of the decision. The decision is not final until the request for reconsideration has been decided.

**BILL ANALYSIS:** Section 1.1 would add DES to the list of State entities authorized to receive social security numbers from DMV. The social security numbers are disclosed for the purpose of verifying employer and claimant identity.

Section 2.2 would make a technical change to move the date for the calculation of tax rates for certain employers from July 31 to June 30. The calculation is based on a 12-month period, and June 30 is the end of the calendar quarter.

Section 2.3 would modify the work search requirement by increasing the number of job contacts to 5 per week and eliminating the requirement to search on 2 different days.

Section 2.4 would eliminate the procedure to request reconsideration of decisions of DES and modernize the language of G.S. 96-15(h).

Section 2.5 would correct 3 references to DES.

**EFFECTIVE DATE:** Section 2.2 would be effective for contributions payable for calendar quarters beginning on or after January 1, 2014. Sections 2.3 and 2.4 would be effective July 1, 2014.

## **PART III: GARNISHMENT AND ATTACHMENT FOR THE COLLECTION OF UNPAID UI TAXES**

**CURRENT LAW:** DES is authorized by G.S. 96-10(b) to bring civil actions to collect delinquent UI taxes. G.S. 1-359 governs the manner in which debtors of a judgment debtor may satisfy an execution.

**BILL ANALYSIS:** The bill clarifies DES authority to use attachment and garnishment of credit card receipts to satisfy a judgment for unpaid employment taxes.

Section 3.1.(a) amends G.S. 1-359 to specifically allow DES to execute a judgment by attaching or garnishing a delinquent employer's credit card receipts and then receiving those funds directly from a credit card company or clearinghouse in discharge of the debt.

Section 3.1.(b) clarifies that, under G.S. 96-10(b)(1), DES may garnish or attach credit card receipts due an employer using the process for execution authorized by new G.S. 1-359(b) to receive direct payment.

**BACKGROUND:** DES is responsible for collecting unemployment taxes from employers who fail to remit unemployment tax payments. DES may use the same forms of execution available to any other judgment creditor who prevails against a defendant. Obtaining payment from a debtor's debtor is one such method.

## **PART IV: SET THE DURATION OF UNEMPLOYMENT BENEFITS BASED ONLY ON UNEMPLOYMENT RATES**

**CURRENT LAW:** The duration of UI benefits is determined based on a formula in G.S. 96-14.4 and a table in G.S. 96-14.3. The formula in G.S. 96-14.4 was designed to reward UI claimants who have a

# House Bill 1069

Page 3

higher attachment to the workforce by comparing base period wages and wages in the last 2 quarters. The formula resulted in some UI claimants receiving less than the maximum number of weeks of UI benefits allowed under the table. The table in G.S. 96-14.3 gives the minimum and maximum number of weeks an individual is allowed to receive UI benefits depending on the seasonal adjusted statewide unemployment rate that applies to the six-month period in which the claim is filed.<sup>2</sup> The table follows:

Seasonal Adjusted Unemployment Rate	Minimum Number of Weeks	Maximum Number of Weeks
Less than or equal to 5.5%	5	12
Greater than 5.5% up to 6%	6	13
Greater than 6% up to 6.5%	7	14
Greater than 6.5% up to 7%	8	15
Greater than 7% up to 7.5%	9	16
Greater than 7.5% up to 8%	10	17
Greater than 8% up to 8.5%	11	18
Greater than 8.5% up to 9%	12	19
Greater than 9%	13	20

**BILL ANALYSIS:** The bill would eliminate the variable range for the duration of UI benefits and pay all UI claimants based on the maximum number of weeks currently allowed. The bill also makes conforming changes to statutory cross-references.

**BACKGROUND:** S.L. 2013-2 (House Bill 4), UI Fund Solvency & Program Changes, reduce the maximum duration of regular UI benefits from 26 weeks to 20 weeks and tied the duration of UI benefits to the seasonal adjusted unemployment rate under a table. S.L. 2013-2 did not change the formula setting a variable number of weeks based on attachment to the workforce. The interaction of the existing formula and the new table does not reduce benefits below 17 weeks – making the minimum number of weeks in the table inoperable below 17 weeks. The bill would remove the variable range and place all UI claimants at the maximum duration.

**EFFECTIVE DATE:** Part IV of the bill would be effective July 1, 2014 and apply to claims for UI benefits filed on or after July 1, 2014.

## **PART V: REQUIRE PHOTO IDENTIFICATION TO RECEIVE UI BENEFITS**

**CURRENT LAW AND BACKGROUND:** DES administratively requires UI claimants present photo identification before receiving services. DES imposed the photo identification requirement to address fraudulent UI claims and create an audit trail. The photograph is evidence of the individual who committed fraud and aids prosecution of criminal offenses. USDOL supports program integrity measures such as requiring photo identification. USDOL provided a staff opinion that photo identification is a permissible eligibility requirement for UI claimants as part of the requirement to report to DES.

**BILL ANALYSIS:** The bill would add a new, statutory eligibility requirement to receive UI benefits that claimants must present photo identification. Valid photo identification requires the individual's photograph and must be one of the following documents:

---

<sup>2</sup> One six month base period begins on January 1 and one six month base period begins on July 1. For the base period that begins January 1, the average of the seasonal adjusted unemployment rates for the State for the preceding months of July, August, and September applies. For the base period that begins July 1, the average of the seasonal adjusted unemployment rates for the State for the preceding months of January, February, and March applies.

# House Bill 1069

Page 4

- A driver's license, learner's permit, provisional license, or nonoperators identification card issued by North Carolina, another state, the District of Columbia, United States territory, or United States commonwealth.
- A United States passport.
- A United States military identification card.
- A Veterans Identification Card issued by the United States Department of Veterans Affairs.
- A tribal enrollment card issued by a federally recognized tribe.
- Any other document issued by the United States or any state that the Division determines adequately identifies the individual.

## **PART VI: BOARD OF REVIEW FOR UNEMPLOYMENT INSURANCE**

**CURRENT LAW:** USDOL encourages states to have a second level of review for decisions and determinations made by DES, but it does not require one. The General Assembly created a Board of Review<sup>3</sup> to determine appeals policies and procedures and to hear appeals arising from the decisions and determinations of the Lower Appeals Department of DES. The Board consists of three members<sup>4</sup> appointed by the Governor and confirmed by the General Assembly: one member representing employers, one member representing employees, and one member representing the general public.<sup>5</sup> The member representing the general public is designated as the chair of the Board and must be a licensed attorney.

Beginning November 1, 2011, the UI laws provided a second level of appeal to an impartial Board of Review. However, the Board was not appointed until December 6, 2013. In the absence of a Board, the Assistant Secretary of Commerce for DES, or the Secretary of Commerce's designee, provided parties with the second level of review that the statute vested in the Board of Review.

In a case before the Superior Court in Rowan County, the Court noted that the Assistant Secretary of Commerce for DES did not have the statutory authority to make those decisions. According to the testimony in the case,<sup>6</sup> there may have been 13,000 lower level decisions appealed to the second level of review prior to the Governor's appointment of the Board of Review.

**BILL ANALYSIS:** Part VI of the bill addresses two issues: the validation of higher-level appeal decisions made since November 1, 2011, and the appointment of the members to the Board of Review.

A party who does not agree with a DES decision or determination may seek redress in the Superior Court. The failure to provide a second level of review in the form required by the statute (i.e., by a properly constituted Board of Review) does not harm a party who disagrees with a decision because the party has the ability to appeal to Superior Court.

Section 6.2 of the bill validates the second level appeals decisions made since November 1, 2011, and before July 1, 2014, in two ways:

- Provides decisions made by the Assistant Secretary of Commerce for DES or the Secretary of Commerce's designee are validated and given the same legal effect as if the decision had been issued by the Board of Review.

---

<sup>3</sup> S.L. 2011-401.

<sup>4</sup> G.S.96-4(b).

<sup>5</sup> The Governor made the following appointments to the Board of Review: Keith Holliday, representing employers; Stanley Campbell, representing employees; and Jeanette Doran, representing the general public.

<sup>6</sup> Wesley A. Lane v. N.C. Department of Commerce, Division of Employment Security, Rowan County Superior Court 13 CvS 1109.

# House Bill 1069

Page 5

- Provides that decisions made by the three individuals appointed by the Governor in December 2013 to serve on the Board of Review are validated and given the same legal effect as if the decision had been issued by the Board of Review.

Section 6.1 of the bill provides for staggered four-year terms for members of the Board of Review and provides a process for the appointment and confirmation of the Board members:

- The terms for Board of Review members begin on July 1 and end on June 30 of the fourth year.
- The Governor must submit the name of an individual to the General Assembly for confirmation on or before May 1 of the year of the expiration of the term. If the General Assembly does not confirm the nomination by May 30, the office is considered vacant and the Governor must submit the name of another individual to the General Assembly for confirmation within 30 days. If the Governor fails to timely submit a nomination, then the General Assembly may fill the office.
- When a vacancy occurs in an office of the Board of Review, the Governor has 30 days to submit the name of an individual to the General Assembly for confirmation to serve on the Board of Review. If the General Assembly fails to confirm the individual within 30 days of the submission, the office is considered vacant and the Governor must submit the name of another individual to the General Assembly for confirmation. If the Governor fails to timely submit a nomination, then the General Assembly may fill the office.
- If a vacancy exists when the General Assembly is not in session, the Governor may appoint an individual to serve on the Board of Review on an interim basis. The Governor must submit the name of the person serving on an interim basis to the General Assembly for confirmation within 14 days of the date the General Assembly convenes or reconvenes a Regular Session.

Section 6.2 creates the staggered terms for the Board of Review and addresses issues about the proper constitution of the Board of Review. The General Assembly created the Board in S.L. 2011-401, but failed to set the salaries for the Board members. The Current Operations and Capital Improvements Appropriations Act of 2012, S.L. 2012-142, set the salaries for the Board members.<sup>7</sup> Although the budget became law on July 2, 2012, the appointments to the Board had not been made by June of 2013.

In recognition that the appointments would not be made prior to the adjournment of the 2013 Session, the General Assembly enacted the one-time exception to the confirmation process in S.L. 2013-224. In S.L. 2013-224, the General Assembly directed the Governor to make the appointments to the Board by September 1, 2013, and provided that the appointments made under the authority of this legislation would not require confirmation. The Governor did not make the appointments by September 1, 2013. Section 6.2(b) repeals that section since it no longer applies.

The Governor appointed three individuals in December 2013 to serve on the Board of Review. The Governor did not submit the names of the individuals to the General Assembly for confirmation as required by G.S. 96-4(b). Section 6.2(c) designates who is serving on the Board of Review and the terms of those members. The terms are set in a manner to achieve the staggered terms, as provided in the changes made by section 6.1 of this Part.

---

<sup>7</sup> The chair receives an annual salary of \$122,255 and the remaining two members receive an annual salary of \$120,737.

# House Bill 1069

*Page 6*

*UI Team: Cindy Avrette, Janice Paul, and Greg Roney with the Research Division; Phyllis Pickett with the Bill Drafting Division; Rodney Bizzell and Aubrey Incorvaia with the Fiscal Research Division.*